IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.87 OF 2005

Seema T. Shetty Petitioner

versus

Union of India and others Respondents

J.S.Kini for petitioner.

Suresh Kumar with Kiran Kandpile for respondent no.1

R.V.Paranjape for respondents 2 to 4.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 21st April 2005

PC :

1. Heard Mr.Kini in support of this petition. Rule. Rule made returnable forthwith. Mr.Suresh Kumar appears for respondent no.1 and Mr.Paranjape for respondents 2 to 4.

2. The petition is filed by a lady employee making a grievance against respondent no.3 who is Executive Director in the Plastics Exports Promotion Council, which is a body sponsored by the Ministry of Commerce and Industries, Union of

India. The grievance is with respect to sexual harassment and the complaint made and the correspondence in that behalf has been annexed to the petition. Respondent no.3 who is an officer against whom complaint is made as well as respondent no.2, have filed their replies and rejoinder thereto has also been filed. Having gone through the material on record we are of the view that this is a fit case where the directions of the Apex Court in the case of Vishakha Vs. State of Rajasthan reported in AIR-1997-SC-3011 will have to be honoured. That judgement requires committee to be constituted and to go into such grievances.

3. Mr.Paranjape appearing for respondents 2 to 4 raised a preliminary objection that a writ petition will not lie inasmuch as according to him this Council is not amenable to writ jurisdiction. he has drawn our attention to the Memorandum of Association of this Council. We have gone through the same and we find that there is sufficient control of the Commerce and Industries Ministry on the functioning of this Council. As far as objects of this council are concerned, it is stated in clause 3(l) that one of its objects is to make recommendations, as may

be necessary or expedient to Government and public bodies like Chambers of Commerce where the Company on investigation of a complaint received by it, is satisfied about activities of the exporter being genuine or otherwise. Under clause 4 it is the responsibility of the Council to advise or represent to Government, Local Authorities and Public Bodies of the policies adopted by them in relation to their effect on industry or commerce and other measures including direct and indirect taxation. Clause 9 of the Memorandum of Association provides that no change, alteration or modification shall be made in the Memorandum without the prior concurrence of Union Government. As far as members of Council are concerned it is provided that it will have co-opted members who are Central Government nominees. Amongst others Joint Controller of Imports and Exports is one of them. The budget estimate and supplementary estimate are to be prepared by committee of this council and are to be submitted to the Council and to the Union Government on such date as may be decided by the council in consultation with Union Government. Clause 61 provides that no expenditure shall be incurred until the budget is sanctioned by the Council in consultation with the Union

Government. Supplementary expenditure also is to be incurred by the council in consultation with the Union Government. The current accounts or the accounts of the council are to be kept in banks approved by the Union Government at a place or places as may be determined by the Committee of Administration from time to time. In our view these are sufficient ingredients of the control of Central Government over the council and the Council will have to be held as an authority within the meaning of Article 12 of Constitution of India. In the circumstances there is no substance in the objection raised by the respondents that the council is not amenable to writ jurisdiction.

4. Having dealt with the preliminary objection, we had asked Mr.Suresh Kumar, learned counsel for Central Government to take instructions as to whom the Secretary of Commerce and Industries would like to appoint as members of the committee to look into the grievances of petitioner. He has already addressed a letter on 6th April 2005 but no response has been received. In the circumstances we direct the Secretary, Commerce and Industries Department, Union Government to appoint a committee of three members. Two of

them will be of the rank of Joint Secretary or above, from the Ministry of Commerce and Industries, both stationed in Mumbai and one of them will be a lady officer who should be senior amongst them. She will be the Chairman of this committee. The Secretary, Commerce & Industries, Union Government will write to Vice Chancellor, Mumbai University as well as to SNDT University requesting for name of third member of the committee, who will again be a lady and preferably enjoying the post of Principal of an affiliated college or Head of Department in the University. This committee of three members will go into the grievances of petitioner. The Secretary, Commerce and Industries, Union Government to constitute such committee within four weeks. The committee will thereafter proceed to look into the complaint and decide the same preferably within eight weeks thereafter. The report will be submitted by the Chairman of the Committee to the Secretary, Commerce and Industries, Union Government, who will thereafter take appropriate decision depending upon the findings of committee. It will be open to the petitioner to examine witnesses whom she wants to examine. It will also be open to the respondent no.3 to lead his own evidence as well as of any

other supporting witness. It will be desirable that respondent no.3 goes on leave after the committee starts its functioning so that the witnesses appear before the committee without any influence. This is particularly because it is a very small office. We add that the petitioner apprehends termination from service. Needless to state that she will not be terminated from her services. Rule made absolute in above terms without any order as to costs.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)